

SENATE BILL 3234
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 13; Title 33; Title 34; Title 49; Title 55; Title 56; Title 67; Title 68 and Title 71, relative to services for aged persons and the disabled.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be known and cited as the "Tennessee Department of Aging and Disability Act of 2004".

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 3, is amended by adding the following as new part 27:

4-3-2701.

(a) There is hereby created the department of aging and disability.

(b) The commissioner of aging and disability shall determine the organization of and the methods of procedure within the department which are deemed suitable or necessary to exercise the powers conferred and perform the duties imposed by law and shall appoint, in accordance with applicable personnel guidelines and budgetary limitations, such assistants as are deemed necessary to effectively discharge the duties of the office in an orderly and efficient manner.

4-3-2702.

The department of aging and disability shall be under the charge and general supervision of the commissioner of revenue.

4-3-2703.

(a) The commissioner is vested with power to prescribe rules and regulations not inconsistent with law and prepare such forms as the commissioner may deem proper for the administration of the duties of the commissioner's office.

(b) The department of aging and disability has the power to:

(1) Administer the responsibilities assigned to the department pursuant to title 71, chapter 2, part 1; and

(2) Administer such other programs as may be assigned by law.

SECTION 3. Tennessee Code Annotated, Title 71, Chapter 2, Part 1, is amended by deleting the part in its entirety and by substituting instead the following:

71-2-101.

The provisions of this part shall be administered by the department of aging and disability. The purposes of this part are to provide a comprehensive and coordinated service system for the state's aging population, giving high priority to those persons in greatest need, to conduct studies and research into the needs and problems of the aged, and to provide a system of home and community based long-term care services which is responsive to the needs of all Tennesseans regardless of age, disability, or economic status.

71-2-102.

As used in this part, unless the context otherwise requires:

(1) "Area agency on aging" means any agency which has been designated by the department to plan for and provide services to the elderly and disabled within a defined geographic area;

(2) "Commissioner" means the commissioner of aging and disability;

(3) "Department" means the department of aging and disability;

(4) "Home-and community-based long-term care" means supportive services, including but not limited to personal assistance, homemaker and chore services, adult day services, assistive technology, home delivered meals, assisted transportation and mobility services, respite and hospice care, and rehabilitative care, which are provided to older persons and individuals with disabilities to remain independent and avoid inappropriate institutionalization and which help individuals maintain physical, social, and spiritual independence in the least restrictive environment;

(5) "Older Americans Act" means the Older Americans Act of 1965, as amended (42 U.S.C. § 3001 et seq.); and

(6) "Planning and service area" means a geographical division of the state which serves as an administrative unit for the purpose of planning and delivering services to older persons.

71-2-103.

The department of aging and disability shall plan, develop, and administer projects, programs, services and state and federal funds designated for, and relating to, disabled adults and older persons in this state, including those sponsored by the federal government, when such projects, programs and services are not the specific responsibility of another state agency pursuant to some other federal or state law. The department shall be designated as the sole state agency to plan and administer all state activities related to and authorized under the Older Americans Act, except for Title V activities under the Older Americans Act which shall be administered by the department of labor and workforce development.

71-2-104.

(a) The department shall:

(1) Allocate funds for projects and programs for older persons and disabled adults, subject to the limits of the appropriation by the general assembly and funds available or received from the federal government for such projects and programs. The department is authorized to accept funds from the federal government and private sources and to administer such funds to achieve its purposes pursuant to the provisions of § 71-2-103;

(2) Serve as an advocate within government and in the community for older persons and disabled adults in Tennessee;

(3) Designate planning and service areas and area agencies on aging in accordance with the Older Americans Act and federal regulations promulgated thereunder. The department shall review the boundaries of the planning and service areas from time to time and shall change them as necessary to comply

with the Older Americans Act or to reflect changes in governmental boundaries or major changes in population distribution;

(4) Adopt the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the purpose of administrative hearings and rulemaking as required under this part;

(5) Receive the cooperation of other state departments and agencies in carrying out the policies and objectives of this part; and

(6) Enter into such contracts and make such grants within the limits of appropriated funds, as are necessary or appropriate under this part, and in a manner consistent with state or federal law.

(b) In addition to the powers, responsibilities or duties granted to the department elsewhere in this part, the department may:

(1) Promulgate, amend, revise, and rescind such rules as are necessary and appropriate to carry out the purposes of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Advise the governor and the heads of state departments and agencies regarding policies, programs, services, allocation of funds, and the needs of older persons and disabled adults in Tennessee and make recommendations for legislative action to the governor and to the general assembly;

(3) Hold hearings, conduct research and other appropriate activities to determine the needs of older persons and disabled adults in the state, including particularly, but not limited to, their needs for health and social services, and to determine the existing services and facilities, private and public, available to meet those needs;

(4) Develop and conduct, alone or in coordination with other agencies, research and demonstration projects and programs that provide training, education, and services to advance the interests of older persons and disabled adults; and

(5) Stimulate more effective use of existing resources and services for older persons and disabled adults and develop programs, opportunities and services which are not otherwise provided for older persons and disabled adults, with the aim of developing a comprehensive and coordinated system for the delivery of health and social services.

(c)

(1) In addition to the powers, responsibilities and duties granted to the department, the department shall initiate an outreach program to provide Medicare-eligible Tennesseans information and education relative to obtaining prescription drugs at a discounted cost, and obtaining prescription drugs through programs based upon an individual's income. Education and information shall include, but not be limited to the availability of:

(A) Prescription drugs through patient assistance programs offered by pharmaceutical manufacturers;

(B) Prescription drug coverage for individuals who are eligible for TennCare, federal veterans affairs programs, Medicare supplemental policies and any other program that provides such coverage; and

(C) Prescription discount cards or information on how to access other programs that provide discounted prescription drugs to eligible participants.

(2) Minimally, such outreach shall include:

(A) Assistance in the implementation of a program to assist Medicare-eligible persons in processing the necessary documents in order to participate in the programs in subdivision (c)(1);

(B) A toll-free number manned during business hours to provide information regarding the programs outlined in subdivision (c)(1);

(C) A website or referral to website links that provide information regarding the programs outlined in subdivision (c)(1); and

(D) Presentations to senior groups regarding the availability of the programs outlined in subdivision (c)(1).

(3) The department shall implement the outreach program within the department's available resources.

(4) The department may delegate any or all such responsibilities to a private or public contractor.

(5) The department is authorized to make application for grants to fund programs set out in subdivision (c)(1).

(6) The department may adopt rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this subsection.

(7) The department shall file a report with the senate commerce, labor and agriculture committee and the house health and human resources committee by February 15, 2005, and annually thereafter by February 15. The report shall include, but not be limited to:

(A) The pharmacy assistance programs which were available;

(B) The outcome of each program by county and population served;

(C) Which agency, contractor, or personnel provided the services;

(D) The number and location of presentations made to senior groups; and

(E) The commissioner's opinion as to the effectiveness of the program and any recommendations for revision, continuation, expansion or termination of such outreach program.

(d) Nothing in this part or part 14, chapter 5 of this title shall authorize the department to exercise any control or authority over any aspect of the administration of programs for home and community based long-term care that are operating on the basis of federal waivers in effect on June 19, 2001.

71-2-105.

(a) The commissioner shall be the chief administrative officer of the department and shall serve at the pleasure of the governor. The commissioner shall have such education as deemed necessary by the governor, with a minimum of five (5) years' experience in the fields of aging or disability, or administrative experience as necessary to administer the programs under this part, or as determined by the department.

(b) The commissioner shall:

(1) Be available to serve or be represented on state level committees or bodies where the purpose of that state body or committee is concerned with the general health, education or welfare of the citizens of Tennessee when older persons or disabled adults are affected by the decisions of that body;

(2) Develop, as required under the provisions of the Older Americans Act, a plan for state programs, services and activities for older persons, to be updated periodically;

(3) Supervise the expenditure of funds and be responsible for complying with all applicable provisions of state and federal law in the receipt of and disbursement of funds;

(4) Serve as an advocate within government and in the community for older persons and disabled adults in Tennessee;

(5) Recommend to the department such rules as are necessary and appropriate to carry out the purposes of this part;

(6) Employ or contract for the services of experts and technical consultants as may be necessary to carry out the purposes of this part;

(7) Conduct evaluations and prepare reports in accordance with the terms of the Older Americans Act and other state and federal laws; and

(8) Within the limits of appropriated funds, employ such personnel as may be required to carry out the provisions of this part. The commissioner shall appoint and may remove all such personnel in accordance with the civil service system.

71-2-106.

(a) Within the department there shall be an established office of the state long-term care ombudsman (hereinafter "the office"), which shall carry out those functions delineated in § 307(a)(12) of the Older Americans Act.

(b) The office shall designate and contract with, either directly or through the area agency on aging, a local grantee to establish and operate a local ombudsman program in each of the designated planning and service areas. Each local ombudsman program shall carry out the duties of the office in each area through paid staff and trained volunteers. For the purposes of carrying out those duties, and only to the extent required by § 307(a)(12)(H)(vi) of the Older Americans Act, each local program unit will be considered to be a "subdivision" of the office; provided, that this shall have no effect upon the character of local government or private agencies or corporations, and they shall not be considered to be agencies of the state of Tennessee.

(c) Paid staff and volunteers shall be trained as required by and under the supervision of the office, which shall certify those persons who have been properly trained as "representatives" of the office; provided, that local program employees and volunteers shall not be considered to be employees of the state of Tennessee. The office shall maintain a current listing of certified representatives. Certified representatives shall be immune from liability for acts or omissions committed within the scope of their assigned duties, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain.

71-2-107.

Notwithstanding any other provision of law, rule, regulation or policy to the contrary, the standards and procedures developed by the department relative to the nutrition program for older persons operated in accordance with the Older Americans Act shall not establish a threshold of an average of twenty (20) congregate meals per day for every site but shall first consider the remote location of a meal site. For such sites, if a determination is made by the department that the majority of the older persons in the area served by the site are physically unable to attend a congregate meal site on a consistent basis and the health and well-being of such persons would be better

maintained by receiving home-delivered meals, the department shall apply a threshold of an average of twenty (20) congregate and home-delivered meals a day for such sites.

71-2-108.

(a) The department shall require its contractors, grantees, and subcontractors to verify individual background information for newly hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of disabled or elderly persons in their homes.

(b) The department shall promulgate rules which develop standard procedures specifying minimum requirements applicable to verifying individual background information or performing a criminal history background check of all paid or volunteer in-home care providers for vulnerable elderly and disabled persons. The commissioner is expressly authorized to promulgate such rules as public necessity rules pursuant to § 4-5-209(a)(4) to provide an immediate effective date.

(c) If the criminal history background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, it shall be conducted by the submission of fingerprint cards to the Tennessee bureau of investigation or the federal bureau of investigation. Any cost incurred by the Tennessee bureau of investigation or the federal bureau of investigation shall be paid by the organization requesting such investigation and information. If a criminal history background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, the payment of such costs shall be made in the amounts established by § 38-6-103.

SECTION 3. Tennessee Code Annotated, Section 4-3-101, is amended by adding the following as a new item to be appropriately designated:

() Department of aging and disability;

SECTION 4. Tennessee Code Annotated, Section 4-3-111, is amended by adding the following as a new item to be appropriately designated:

() Commissioner of aging and disability, for the department of aging and disability;

SECTION 5. Tennessee Code Annotated, Section 8-23-101(c), is amended by adding the following as a new item to be appropriately designated:

() Commissioner of aging and disability;

SECTION 6. Tennessee Code Annotated, Section 4-29-227(a)(7), is amended by deleting the subdivision in its entirety.

SECTION 7. Tennessee Code Annotated, Section 4-29-225(a), is amended by adding the following as a new item:

() Commission on aging and disability, created by Section 71-2-104;

SECTION 8. Tennessee Code Annotated, Section 4-29-228(a), is amended by adding the following as a new item:

() Department of aging and disability, created by Section 4-3-101;

SECTION 9. Any provision of this act, or application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation.

SECTION 10. As sections, parts, titles, chapters and volumes of Tennessee Code Annotated are amended, repealed, revised and replaced, the Tennessee Code Commission is directed to change references to the commission on aging and disability or the commission on aging to references to the department of aging and disability to reflect the transfer required by the provisions of this act. After the effective date of this act, any reference to the commission on aging and disability or the commission on aging shall be deemed to be a reference to the department of aging and disability.

SECTION 11.

(a) Notwithstanding any provision of law to the contrary, upon the effective date of this section all employees of the commission of aging and disability shall be transferred to the department of aging and disability created by Tennessee Code Annotated, Section 4-3-101.

(b) All reports, documents, surveys, books, records, papers or other writings in the possession of the commission with respect to administering the provisions of Tennessee Code Annotated, Title 71, Chapter 2, assigned to the department of aging

and disability by this act, shall be transferred to and remain in the custody of the department of aging and disability.

(c) All leases, contracts and all contract rights and responsibilities in existence with the commission with respect to the duties transferred by this section shall be preserved and transferred to the department of aging and disability.

(d) All assets, liabilities and obligations of the commission with respect to the duties transferred by this section shall become the assets, liabilities and obligations of the department of aging and disability.

SECTION 12.

(a) Contracts or leases entered into prior to the effective date of this section, with respect to any program or function transferred to the department of aging and disability with any entity, corporation, agency, enterprise or person, shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on the effective date, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of aging and disability, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) The provisions of this act shall not be implemented in any manner which violates the prohibition against impairment of contract obligations as contained in Article 1, Section 20, of the Constitution of Tennessee.

SECTION 13. Upon the effective date of this section, the department of aging and disability, through its commissioner, shall have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs and/or responsibilities outlined in this act or assigned to the department by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds as administered by the department of finance and administration.

SECTION 14. All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by an agency of state government whose functions have been transferred under the provisions of this act shall remain in full force and effect and shall hereafter be administered and enforced by the department of aging and disability. To this end, the department of aging and disability, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

In order to comply with the effective date set forth within this act, the department may implement its rulemaking authority through promulgation of public necessity rules in accordance with Tennessee Code Annotated, Section 4-5-209. Upon delivering a draft of any such public necessity rules to the attorney general and reporter for approval as required by such section, the department shall simultaneously deliver a copy of such draft public necessity rules to the chair of the government operations committee of the senate and to the chair of the government operations committee of the house of representatives.

SECTION 15. The Tennessee Code Commission is directed to change references to the commission on aging and disability or the commission on aging to references to the department of aging and disability to implement the provisions of this act in Tennessee Code Annotated, Sections 4-3-123, 4-3-1405, 13-14-106, 34-7-103, 34-7-104, 34-7-105, 49-8-803, 55-4-223, 56-1-211, 67-6-322, 68-1-1503, 68-11-203, 68-11-815, 71-5-1402, 71-5-1404 and 71-5-1407.

SECTION 16. The commissioner of aging and disability is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 17. Sections 6 and 7 of this act shall take effect on becoming law and all other provisions of this act shall take effect on July 1, 2005, the public welfare requiring it